IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13717 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SATHVARA GOVIND ARJAN

Versus

JIVIBEN GOKAL

Appearance:

1. Special Civil Application No. 13717 of 2003

MR JV MEHTA for the Petitioner

UNSERVED-EXPIRED (N) for Respondent No. 1

MR MAHESH BHAVSAR for Respondents Nos. 2-4

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 17/04/2004

ORAL JUDGEMENT

Heard the learned advocates.

RULE. Learned advocate Mr.Bhavsar waives service of rule on behalf of the respondents Nos.2,3 and 4.

It is reported by the Registry that respondent No.1 is not served as she has passed away. Learned advocate Mr.J.V.Mehta states that the respondent No.1 is the mother of the present petitioner and the respondents Nos.2, 3 and 4. The estate of the respondent No.1 is thus duly represented.

The respondent No.1, the mother, had instituted Special Civil Suit No.442/1996 in the Court of learned Civil Judge (S.D.), Morbi for partition of the joint family properties and one-half share in the said properties against the petitioner and the respondents Nos.2, 3 and 4, the defendants Nos.1 to 4.

Pending the suit the petitioner moved application Ex.56 under Order 6 Rule 17 CPC for permission to amend the written statement. According to the petitioner one of the alleged joint family properties being land Survey No.1230 admeasuring 2-Acres 20-Gunthas situated at Madhapar was sold on 5th November, 1963 by a registered sale deed by the father of the petitioner during his life time. The said fact was required to be brought on the records of the matter. The said application Ex.56 came to be rejected by the learned Civil Judge on 19th July, 2003. Feeling aggrieved, the petitioner - defendant No.1 has preferred the present petition.

Mr.Mehta has submitted that the learned Civil Judge has not assigned the reasons for rejecting the said application. According to the learned Civil Judge the said application did not answer the requirement of Order 6 Rule 17 CPC. Mr.Mehta has submitted that Order 6 Rule 17 CPC empowers the Court to allow a party to alter or amend his pleadings. The said rule also requires that such amendment shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. In the submission of Mr.Mehta such amendment shall be granted as a matter of course. Only exception is where the trial has commenced. In such cases the Court has to be satisfied that in spite of due diligence the party could not have raised the matter before the commencement of trial. Mr.Mehta has submitted that in the present case the trial has not yet commenced. The fact required to be brought on the record of the matter goes to the root of the matter and shall also affect the subject matter of the suit. Hence, the said amendment ought to have been granted as a matter of

course.

On the facts and in the circumstances of the case, the petition is allowed. The impugned order dated 19th July, 2003 made below application Ex.56 is quashed and set aside. The application Ex.56 for amendment of written statement is granted on condition that the petitioner shall carry out the said amendment on or before 3rd May, 2004 and that the petitioner shall pay a cost of Rs.350=00 to each of the defendants Nos.2, 3 and 4. Rule is made absolute accordingly. The parties shall bear their own costs.

(Ms. R.M.Doshit, J.)

/sakkaf